IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2966 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SAHDEV G YADAV

Versus

MAHESH K DESAI

Appearance:

1. Special Civil Application No. 2966 of 2003

MR RS PANJWANI for Petitioner No. 1

MS MEGHA JANI for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.S.SHAH

Date of decision: 28/11/2003

ORAL JUDGEMENT

The petitioner has filed Motor Accident Claims Petition No. 807 of 1998, before the Motor Accident Claims Tribunal, Bharuch, claiming compensation for the injuries caused to the petitioner in a motor vehicle accident. On 28.8.2002, the learned advocate for the petitioner submitted an application (Exh.120) for an adjournment on the ground that he was not well. The Tribunal rejected that application on the ground that the

evidence was recorded in all other petitions in the group except the above numbered petition. The Tribunal also noted the absence of the claimant. Thereafter, the learned advocate for the petitioner submitted application dated 5.9.2002 (Exh.121) praying that the petitioner-claimant may be permitted to lead evidence. However, the Tribunal rejected that application also on the same grounds and further observing that the order passed by the Tribunal below application (Exh.120) would be rendered nugatory if the application (Exh.121) was granted. The petitioner thereafter wanted to change his advocate before the Tribunal and filed a purshis to that effect on 13.9.2002 praying for an adjournment to enable the petitioner to engage another lawyer. That application also came to be rejected. The petitioner submitted another application (Exh.15 in MACP No. 807/98) under Order 18, Rule 2 read with Section 151 of the Code of Civil Procedure, 1908 for permission to adduce evidence. The Tribunal rejected the said application also on the ground that sufficient time was earlier granted to the party and the learned advocate. Hence, by order dated 18.9.2002, the application (Exh.15) came to be rejected. The petitioner has, therefore, approached this Court under Article 227 of the Constitution.

2. Heard Mr Panjwani, learned advocate for the petitioner and Ms Megha Jani with Mr CA Mehta, learned advocate for respondent No.2-New India Insurance Company Ltd. None appears for respondent No.1-Mahesh K Desai, though served.

Mr Panjwani, learned advocate for the petitioner assures the Court that the petitioner shall co-operate for expeditious disposal of the claim petition.

3. Having heard the learned counsel for the parties, it appears to the Court that when the claimant himself was suffering because of the delay in payment of compensation for the injuries allegedly sustained by him in a motor vehicle accident, the Tribunal ought to have taken a sympathetic view and ought not to have closed the stage for leading evidence.

4. In view of the above, this petition is allowed. The impugned orders passed by the Tribunal for closing the stage for leading evidence by the petitioner in Motor Accident Claim Petition No. 807 of 1998 are hereby set aside and the Motor Accident Claims Tribunal, Bharuch is directed to permit the petitioner to lead evidence and to prosecute his claim petition.

Rule is made absolute with no order as to costs.

(M.S. Shah, J.)

sundar/-